United States Government National Labor Relations Board OFFICE OF THE GENERAL COUNSEL

Advice Memorandum

DATE: May 31, 2000

TO : Frederick Calatrello, Regional Director

Region 8

FROM : Barry J. Kearney, Associate General Counsel

Division of Advice

SUBJECT: Bridgestone/Firestone 530-4080-5012-6700

Case 8-CA-31197 530-4080-5084-5000

530-8027-0400

This case was submitted for advice on whether the Employer lawfully withdrew recognition based upon a majority anti-union employee petition, where on the following day the Employer received a majority pro-union petition.

The parties' most recent bargaining agreement covered seven unit employees and expired in September 1998. The parties engaged in negotiations for a new agreement until their last bargaining session, on November 10, 1999, when the Employer made a final offer. The Union stated that it would present this offer to the unit employees once the Employer provided a written copy.

However, on December 3, the Employer received an employee petition, signed by five of the seven unit employees, stating: "The following employees of the Great Lakes Mall Firestone who have signed this paper do not want to be represented by the union." The Employer avers that it is not aware of how this petition was circulated. The Region uncovered no evidence that this petition was tainted in any way. The Employer immediately withdrew recognition that same day by notifying the Union steward and also posting a letter of withdrawal on its bulletin board.

The following day, the Union steward prepared a petition reading: "We the workers of Mentor Firestone #1538 have voted majority to have the Machinist & Auto Union to negotiate for the Worker (sic) of Mentor Firestone Store." That petition was signed by four employees; two of these signators had also signed the earlier anti-union petition. The steward gave this petition to the store manager who

¹ [FOIA Exemptions 6 and 7(C)

later told the steward that the petition had been faxed to the Employer's District Manager.

On December 7, the Union asked the Employer what had happened to the written version of its final contract offer. The Employer replied that it could not supply that offer because of its withdrawal of recognition. The Employer admitted that it was aware of the pro-union petition, but still could not recognize the Union. On December 8, the Union notified the Employer of its acceptance of the Employer's last offer.

We conclude that the Employer unlawfully withdrew recognition because the subsequent majority pro-union petition re-established the Union's presumed majority status thereby preventing the Employer from withdrawing recognition.

In Penn Tank, ² the employer received a majority antiunion petition and immediately withdrew recognition. Two weeks later, the Union supplied the employer with a majority pro-union petition. We concluded that the employer's withdrawal was unlawful, even though the employer initially possessed a good faith uncertainty about the union's majority, because (a) the Board should overrule its decision in AMBAC³ holding that the employer was privileged to ignore the subsequent majority pro-union petition supplied within a reasonable period of time; and (b) the union's presumption of majority support therefore continued after the first anti-union petition, and was re-established by the subsequent pro-union petition, such that the Employer could no longer assert a good faith doubt of the Union's status.

In the instant case, the Employer also received "dueling petitions", first a majority anti-union and then a majority pro-union petition one day later. Under our argument in Penn Tank, the Employer may not wholesale ignore the second petition, which in law re-established the Union's presumed majority status depriving the Employer of the privilege to rebut that status and withdraw recognition.

[FOIA Exemption 5

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Penn Tank Lines, Inc., Case 12-CA-19746, Advice Memorandum
dated July 15, 1999 (SAM-ADV-99-4).

³ AMBAC International, Ltd., 299 NLRB 505 (1990).

[FOIA Exemption 5, cont'd.

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B.J.K.